



Nebraska Resources

Newsletter

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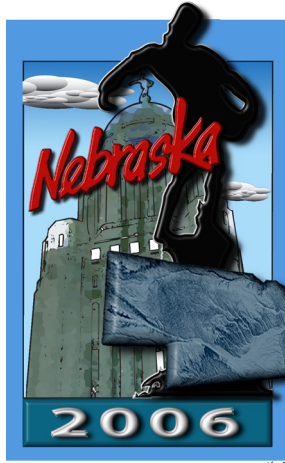
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Legislative Update: Passage of LB 1226

By Ann Diers

The passage of **LB 1226** resulted in several substantial changes to statutes under the jurisdiction of the Department of Natural Resources. Other changes effected by LB 1226 are more "clean-up" in nature. Among the more noteworthy changes are the following:

1. LB 1226 has given NRDs in a river basin that has been determined to be fully or overappropriated **the power to levy a tax equal to the dollar amount** by which their restricted funds budgeted to administer and implement ground water management activities and IMP activities exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY 2005-06, but not to exceed 3 cents on each 100 dollars of taxable valuation on all taxable property in the district for FY 2006-07, and not to exceed 2 cents on each one hundred dollars of taxable valuation annually on all of the taxable property within the district for 2007-08 and 2008-09. This particular change became effective pursuant to an emergency clause. The balance of the revisions discussed in this article will take effect on July 14th.



2. LB 1226 revised current law to provide that no cancellation of a water

right as part of the adjudication process shall prohibit an irrigation district from asserting its right to reassign a cancelled right to other land or transfer the right within 5 years. A water appropriation not perfected may be canceled by the Department without complying with the adjudication statute requirements if the owner failed to comply with conditions of the permit. This change does not apply to appropriations to which map filing requirements apply. Irrigation districts are also now allowed to assign a water right voluntarily relinquished within 5 years. The Department is required to issue an order of cancellation within 60 days of receipt of a voluntary relinquishment.

3. LB 1226 revised statutes **relating to review of instream flow appropriations**. Going forward, notice of pending review will be required to be sent to the appropriator and posted on the Department's web site. Changes also require the appropriator to file documentation of continued use of the appropriation, and allow the director to schedule a hearing on the director's own motion based on comments and information filed.

4. Section 46-655.01, **relating to public water supply spacing protection**, was also revised by LB 1226. The revisions require notice of

intent/notice of renewal to be provided to owners of all land falling within the



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spacing protection provided in the act, and require any notice of determination that the land is not suitable to be provided to NRDs and such owners of land within the spacing protection provided in the act.

5. The bill also created the **Interrelated Water Management Plan Program** for purposes of facilitating and funding the duties of districts arising under the Ground Water Management and Protection Act (GWMPA). The program will function as a grant program administered by Natural Resources Commission and the Department upon recommendation by the Natural Resources Commission using funds appropriated for the program. The commission must develop guidelines and limitations for grant requests for funding such district's duties, including studies required to carry out those duties. **A minimum 20% match of local funds is required.** The DNR will expend funds only with commission approval. **\$2.5 million was appropriated** by the Legislature for the grant program for each of FY 2006-07 and FY 2007-08.



6. Section 46-712 was revised by LB 1226 to provide that if a ground water management area has been adopted by a district that includes one or more controls authorized by subdivision 46-739 (1)(f) or (1)(m) - i.e. restrictions on acres irrigated or on new uses or moratoriums on new uses, the district may request DNR to conduct an evaluation to determine if DNR should place an immediate stay on the issuance of new surface water rights and the DNR may determine that the stay is in the public interest. Stays may include provisions for exceptions, and may be rescinded based on new or additional information that may become available.

7. LB 1226 revised statutes **relating to the preparation of the Department's annual report** to require the Department, in preparing the annual report, to rely on the best scientific data, information, and methodologies readily available to ensure that the conclusions and results contained in the report are reliable. In its report, the department must provide sufficient documentation to allow these data, information, methodologies, and conclusions to be independently replicated and assessed.

8. Another new requirement of LB 1226 is that, whenever the DNR issues a preliminary determination of fully appropriated, it must provide notice to the affected NRDs by certified mail and the notice must be addressed to the manager or his or her designee, and must include the signature of the Director of the Department.

9. LB 1226 revised the stays to be imposed on the construction of new water wells in fully appropriated areas to provide that if a permit with conditions imposed by the NRD has been issued prior to the determination, the stay shall not apply to the construction of a new well pursuant to that permit. The conditions imposed on construction by the NRD must meet the objectives of subsection (3) of 46-715 (i.e., protect existing GW/SW users from depletions begun after the date of the preliminary determination) and may include, but are not limited to, conditions in accordance with subsection (6) of section 46-739 [may have different controls in different parts of district]. Any well constructed pursuant to such NRD permit must be completed in accordance with section 46-738 (i.e., within one year from issuance of the permit).



10. LB 1226 requires that the Integrated Management Plan shall include a plan to gather and evaluate data, information, and methodologies that could be used to implement sections 46-715 to 46-717, increase understanding of the surface water and hydrologically connected ground water system, and test the validity of the conclusions and information upon which the integrated management plan is based. Further, the NRD may decide to include all water users within the district boundary within an IMP (even though the DNR did not determine the whole district to be hydrologically connected).

11. Pursuant to changes made by LB 1226, an NRD may establish different provisions for water wells either permitted or constructed before the designation of a management area for an IMP. Permits for construction of new wells not completed by the date of the determination of fully appropriated shall be subject to any conditions imposed by the NRD.

12. LB 1226 **added a new municipal exception in fully and overappropriated areas.** The new exception provides that, unless an IMP, rule, or order is established prior to November 1, 2005, no IMP, rule, or order shall limit the uses of ground water by a municipality within an area determined by DNR to be fully or overappropriated until January 1, 2026. Exceptions include that any allocations made as of 11/1/05 shall remain in force unless changed by the NRD, and a municipality that has not received an allocation as of 11/1/05, may utilize as a

minimum annual allocation the greater of either the amount of ground water authorized by a permit issued or the governmental, commercial, and industrial uses of the municipality plus a per capita allowance. The per capita allowance will be based on the location of the municipality, increasing east to west, and will not be less than 200 gpcd in the east and not less than 250

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Legislative Update Continued from p. 2

gpcd in the west. Persons served by the city outside the city's limits are part of the population if such service begins prior to 1/1/2026.

Prior to 1/1/2026, any new or expanded single commercial or single industrial development served by any municipality within a fully or overappropriated area, which after the operative date of this section, commences water use resulting in a consumptive use of water in amount greater than 25 million gallons annually may be subject to controls adopted pursuant to section 46-715.

Prior to 1/1/2026 increases in the use of water by a municipality that result in a decrease in streamflow shall be addressed by the IMP pursuant to controls or incentive programs adopted pursuant to section 46-715 and shall not affect the municipal allocations. Any permanent reduction in consumptive use associated with municipal growth, during the period between the operative date of this section and 1/1/2026 shall accrue to the benefit of the NRD within which the municipality is located.

To qualify for the exemption, cities must file a conservation plan with the NRD, if required by the IMP. Villages and other municipalities smaller than a city of the second class are exempt from filing a conservation plan to qualify for the exemption. On and after 1/1/2026, the base amount of an annual allocation to a municipality will be determined as the greater of either (a) the amount of water authorized by a municipal transfer permit from DNR or (b) the greatest annual

use prior to January 1, 2026, plus the per capita allowance. On or after 1/1/2026, increases in consumptive use by a municipality that result in decrease in streamflow will be addressed by the IMP. The city may be subject to controls for amount of consumptive use in excess of the allocations.

LB 1226 provides a similar exception for nonmunicipal commercial or industrial use within an area determined to be fully appropriated until 2026 (unless an IMP is established before 11/1/2005), except that prior to 1/1/2026 the minimum annual allocation for a nonmunicipal commercial or industrial user will be the greater of either (a) the amount specified in an Industrial use permit or (b) the amount necessary to achieve the use including all new or expanded uses that consume less than 25 million gallons annually. Any increase in consumptive use that results in a reduction in stream flow will be addressed by the IMP.

Prior to 1/1/2026 any new industrial use served by a non-municipal well in fully appropriated or overappropriated areas where the use results in consumptive use of more than 25 million gallons annually is subject to the same controls as above. LB 1226 also addresses base amount after 1/1/2026 for nonmunicipal commercial industrial uses, and provides that increases in consumptive use are to be addressed by the IMP.

Please refer to LB 1226 for information concerning other revisions effected by LB 1226, or if you wish to see the exact wording of the changes discussed herein.



Grant from

Nebraska Environmental Trust

Expands NeRAIN collection area

By Rich Kern

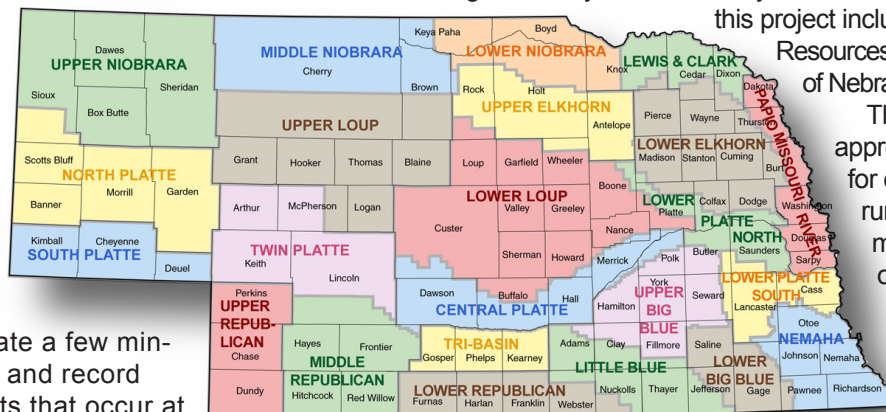
The **Nebraska Rainfall Assessment and Information Network** – or **NeRAIN** for short and pronounced as “AnyRain?” has been around since 2004 in the central and western parts of Nebraska. Thanks to another grant from the **Nebraska Environmental Trust**, it is now being expanded to the northern and eastern parts of the state.

NeRAIN is currently a **network of about 600 volunteers** who donate a few minutes each day to observe and record the rain and snow amounts that occur at their station. They are given a four-inch diameter rain gauge approved by the National Weather Service and trained in proper measurement techniques, locating rain gauge sites for maximum exposure, and how to submit precipitation observations. The results are

entered directly into a website developed by the Nebraska Department of Natural Resources and are available for viewing and analysis immediately. Others organizations supporting this project include the state's Natural Resources Districts and University of Nebraska–Lincoln Extension.

The goal is to have approximately one observer for every township in the rural areas and even more in the urban areas of Nebraska. To get the best distribution possible, not all volunteers can be accepted but if you are interested, go to

<http://dnrdata.dnr.ne.gov/NeRAIN/index.asp>, look over the website to see where gaps occur and if you feel you can contribute to this valuable project, please fill out the online application form.

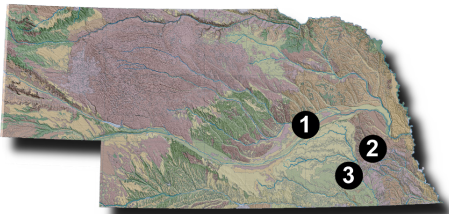




NRDF Fiscal Year 2007 Funds Obligated

By Tom Pesek

At its May 25, 2006, meeting in Lincoln the Natural Resources Commission obligated a total of \$2,351,565.55 in Nebraska Resources Development Fund assistance to three projects for Fiscal Year 2007. The (1) **Upper Prairie/Silver/Moores Creek Project**, a flood control project at Grand Island sponsored by the Central Platte NRD, received \$1,741,622.55 for the construction of floodwater detention cells on Silver Creek. The (2) **Stevens Creek Watershed Project**, a flood control project east of Lincoln sponsored by the Lower Platte South NRD, received \$209,000.00 for additional construction and construction observation costs. A total of \$400,943.00 was provided to the (3) **Little Sandy Creek Watershed Project**, a flood control and recreation project in the Tobias-Daykin-Bruning area. The Little Blue NRD will utilize these funds for various work at floodwater retarding structure sites 12, 73, and 40.



Web Site Changes

The Department of Natural Resources has been making design changes to its web site that will make it more user friendly. These improvements will hopefully help make it easier to locate the wide variety of resources information available. There will be a new look to the DNR web site but more importantly we want visitors to find a more user friendly site that is easier to navigate. One important change has been to highlight News Releases and Legal Notices along with What's New on the front page of the new design.

<http://dnr.ne.gov>



Legislative Update: Passage of LB 508

By Ann Diers

LB 508 made the following changes to Nebraska law:

1) It changed the definition of a headwater segment of a natural stream to mean the portion of a natural stream shown as an intermittent stream on the most recently published USGS topographic quadrangle map. This is a more objective definition than the previous one. Previously, a headwater segment was defined as that portion of a natural stream near its origin which exhibits a natural configuration in land surface and serves to concentrate and give direction to overland flow.

2) LB 508 revised the requirements that must be included on a registration form for a new well. One new requirement is that the date of decommissioning OR a certification that the well will be decommissioned within the required time frame OR a certification that the well will be modified and equipped to pump 50 gpm or less and used only for certain deminimus or non-consumptive use purposes must be provided.

3) The bill revised the definition of a replacement well. The revised definition provides that a replacement well must be constructed to provide water for the same purpose as the original well, and if the purpose is for irrigation, the replacement well must deliver water to the same tract as was served by the original well. Replacement wells must operate in accordance with any applicable permit from DNR, and pursuant to any applicable NRD rules.

By definition, a replacement well must replace an abandoned well within three years after the last operation of the abandoned well. The original well must be decommissioned either before or within 180 days after construction of the replacement well, except that municipal wells will have a year after construction to be decommissioned, and wells may be continued to be used if they are modified to pump 50 gpm or less, and will be used only for nonconsumptive deminimus use and approved by the applicable NRD.

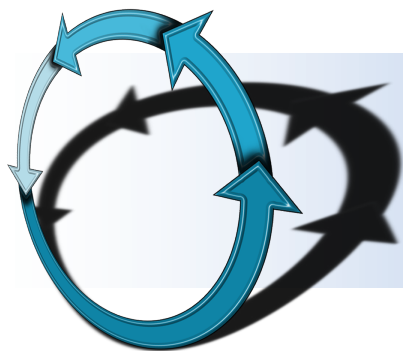
4) LB 508 changes make it clear that a well will not be registered as a replacement water well until DNR receives the notice of decommissioning or notice of modification/equipping of the original well to pump 50 gpm or less for deminimus use. Required notices may be filed by the well contractor who decommissions, modifies, or equips the well, or the pump installation contractor who takes such action, or the owner. Well contractors or pump installation contractors are required to notify the DNR on forms provided by the DNR.

5) Changes brought about by LB 508 require that a well contractor or pump installation contractor satisfy himself or herself that a permit was obtained prior to construction. The NRD permit may further define replacement well in accordance with the Act and not inconsistent with 46-602, and may impose restrictions on consumptive use, or may impose additional restrictions based on historic consumptive use.

6) LB 508 made changes to the membership provisions of the Water Well Standards and Contractor's Licensing Board, and changed provisions relating to the breaking of seals and installation of pumps.

7) LB 508 revised statutes relating to the Water Well Decommissioning Fund to accomplish the following: 1) clarify that allocation by DNR to NRDs which have had cost-share programs for three or more consecutive years shall be based on the previous three-year averages (of illegal wells decommissioned in the district to illegal wells decommissioned statewide); 2) increase the maximum funding of such cost-share from \$300 to \$500; 3) provides that an NRD may establish cost-share guidelines based on well depths and diameters to insure that landowners will be compensated for at least 60% of the cost of water well decommissioning.

Please refer to LB 508 for information concerning other revisions effected by LB 508, or if you wish to see the exact wording of the changes discussed herein.



Development of **JOINT INTEGRATED MANAGEMENT PLANS** *Continues*

By Tina Kurtz

The Department has been working closely with **nine** natural resources districts (**Upper Niobrara White NRD, North Platte NRD, South Platte NRD, Twin Platte NRD, Central Platte NRD, Tri-Basin NRD, Upper Republican NRD, Middle Republican NRD, and Lower Republican NRD**) on the development and implementation of a joint integrated management plan for each district. The Department has also been working with the **five NRDs in the overappropriated basin (NPNRD, SPNRD, TPNRD, CPNRD and TBNRD)** on the development of a **basin-wide plan**.

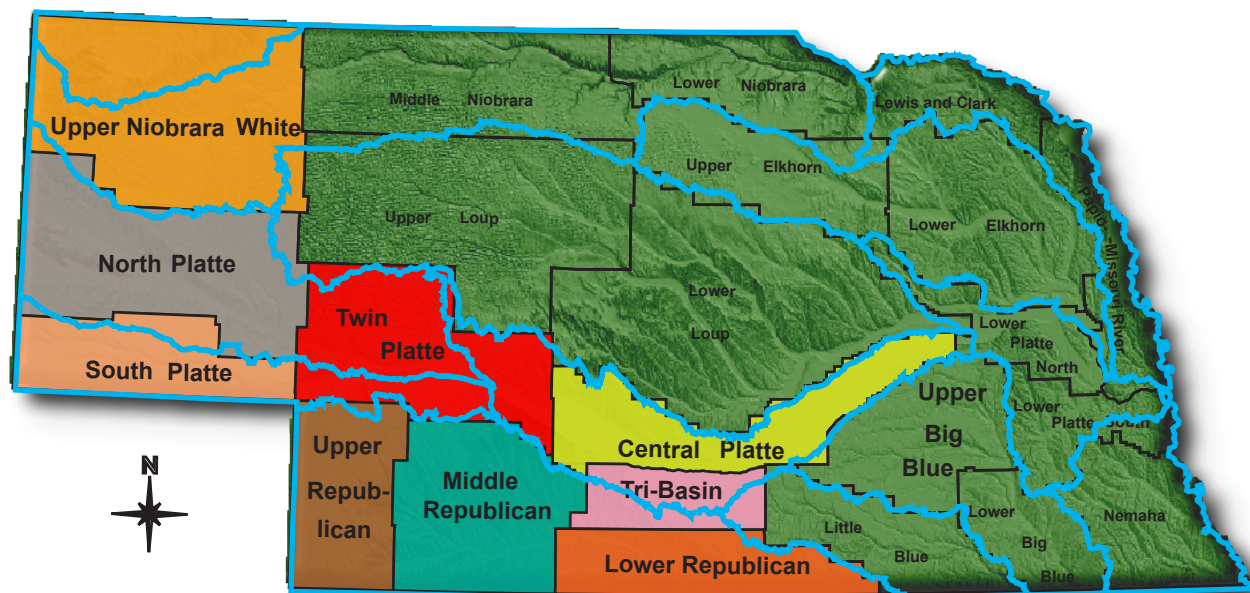
The integrated management planning process in these districts has been a great opportunity for a number of different interests to come together to decide how the water resources within the district and/or basin should be managed. The UNWNRD, NPNRD, SPNRD, TPNRD, CPNRD, and TBNRD have formed a group of stakeholders to serve in an advisory capacity to the Department and the applicable NRD Board as the decision about whether or not to adopt the integrated management plan is ultimately up to the Department and the NRD Board. These **stakeholder groups are made up of people representing a variety of interests such as irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, municipalities, ground water and surface water irrigators, economic development, banking, environmental, and industrial.**

The meeting schedule for these groups varies, but is typically once a month or once every two months. The groups have been a forum for each of the represented interests to voice their concerns and their proposed solutions to the issue of conjunctive management. The group for the over-appropriated basin-wide plan is made up of representatives of the stakeholder groups from each of the five affected NRDs. This group functions much the same as the individual groups. All of the stakeholder meetings are open to the public and reserve time for public comment.

Since the Department recently determined portions of the Upper Big Blue NRD and the TBNRD to be fully appropriated, these districts will need to prepare an integrated management plan with the Department. The Department is currently working with the TBNRD on the development of an integrated management plan for the Republican Basin portion and the Platte Basin west of Highway 183 portion of the district. The area included in that planning process will now have to encompass the remaining portion of the Platte Basin. The integrated management planning process in the Upper Big Blue NRD has not yet begun.

The Department looks forward to continuing work with the NRDs and stakeholder groups on the development of the integrated management plans and the basin-wide plan. It is hoped that the integrated management planning process is a positive experience for all involved.

Nebraska's Natural Resources Districts



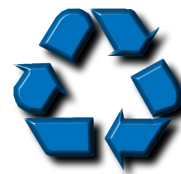
 Major River Basin Lines

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Ann Salomon Bleed, Acting Director

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Nebraska Department of Natural Resources....

....dedicated to the sustainable use and proper management of the State's natural resources.